

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.5031 OF 2004

Shri.Vinayak Bhikaji Pawar ..Petitioner
Vs.
Shri.Bagalkoti Basavraj
Revansiddh and Ors. ..Respondents

.....
Mr.S.P.Kadam for Petitioner
Mr.Uday Warunjikar for Respondent No.1
Mr.M.H.Solkar AGP for Respondent Nos.3 and 4
.....

CORAM : B.H.MARLAPALLE, J.
DATE : APRIL 4, 2005

P.C.:

1. The impugned order passed by the Education Officer (Secondary) Zilla Parishad, Satara is on the issue of seniority of Assistant Teachers in the Secondary School run by the Respondent No.2 Nagar Parishad. Though the impugned order did not disclose under what provisions it came to be passed, the Deputy Education Officer, Zilla Parishad, Satara in his affidavit in reply has referred to the provisions of the M.E.P.S.Act, 1977 and the M.E.P.S.Rules, 1981. The said affidavit indicates that the dispute of seniority has been adjudicated under Rule 12 of the M.E.P.S.Rules, 1981. A Division Bench of this Court in the case of *Kondiba s/o Dattarao Mirashe Vs. State of Maharashtra & others*; [2003(2) Mh.L.J.432] by relying on the decision of the Supreme Court in the case of *M.G.Pandke and others Vs. Municipal*

Council Hinganghat District Wardha and others reported in AIR 1993 SC 142; has held that the M.E.P.S.Act and the Rules framed thereunder are not applicable to the Primary/Secondary Schools run by the Municipal Councils and therefore, the impugned order cannot be treated to be an order under Rule 12 of the M.E.P.S.Rules, 1981.

2. There is no dispute that the issue of seniority has to be decided as per the Service Rules applicable and by the Education Officer/the Municipal Council who is the employer of the teachers and in accordance with Service Rules applicable. In case, the service Rules as framed and applicable to the municipal employees are not available, the issue of seniority of the teachers may be considered on the basis of Secondary School Code if the teachers are employed in the Secondary School.

3. The petition is therefore, disposed of by directing the respondent no.2 to decide the issue of seniority of the teachers on the basis of their qualifications as well as the length of service and the respondent no.2 may seek guidance in this regard from the Education Officer (Secondary) i.e. Respondent no.3. The seniority be decided as expeditiously as possible and preferably within a period of three months from the date of receipt of the writ and after hearing the teachers concerned.

[B.H.MARLAPALLE, J.]